

In our view, the apportionment of damage followed inevitably from the judge's finding that part of the damage was clearly within the respondents' risk. In our view, it has not been demonstrated that any error of law underlay the apportionment arrived at by the judge. In our judgment, he was clearly entitled to halve the damages claimed and there is nothing in the submissions to compel us to come to a different apportionment.

For these reasons, we would dismiss the appeal and cross-appeal. Each party must bear its own costs of appeal.

Appeal and cross-appeal dismissed.

Solicitors: *Joseph Hoo Morris & Kumar; C. Arul & Partners.*

CHEONG SEOK LENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chan Sek Keong J.C.) 1 June 1988]

[Singapore — Magistrate's Appeals Nos. 8 and 13 of 1987]

Criminal Law — Absence from National Service — Assignment under section 5(b) of the Vigilante Corps Act (Cap. 80, 1970 Ed.) — Validity of assignment — Vigilante Corps Act (Cap. 80, 1970 Ed.), ss. 5 & 15(1) — Enlistment Act (Cap. 93, 1985 Ed.), s. 10.

Armed Forces — National Serviceman — Absence without official leave — Assignment to Construction Brigade under section 5(b) of the Vigilante Corps Act (Cap. 80, 1970 Ed.) — Validity of — Vigilante Corps Act (Cap. 80, 1970 Ed.), ss. 5 & 15(1) — Enlistment Act (Cap. 93, 1985 Ed.), s. 10.

Statutory Interpretation — Ejusdem generis — Civil defence duties — Nature and meaning of section 5(b) of the Vigilante Corps Act (Cap. 80, 1970 Ed.) — Constitutionality of assignment — Whether assignment a subsidiary legislation — Whether publication of subsidiary legislation mandatory or directory — Interpretation Act (Cap. 1, 1985 Ed.), s. 23(1) — Constitution of the Republic of Singapore, art. 58.

The appellant was on 5 May 1983 served with an enlistment notice with accompanying instructions pursuant to section 10 of the Enlistment Act and was on 22 June 1983 enlisted for full-time national service in the Vigilante Corps. For his national service, he was posted to the Construction Brigade and was required to undergo a three-month residential training at the Civil Defence School II for the acquisition of skills in construction work. He left the school one Saturday on 2 July 1983 at 1 p.m. but failed to return by 9 p.m. on Sunday. Medical certificates covering the period 4-8 July 1983 were tendered. However, he

A failed to report at 9 p.m. on 8 July 1983 and continued to absent himself from duty for 50 days from that day until 24 September 1983. He was arrested by CNB officers on 13 October 1983 and admitted to Selarang Park Drug Rehabilitation Centre for treatment for drug addiction. On 30 May 1984, he was transferred to Jalan Awan Drug Rehabilitation Centre until 16 November 1984 when he was discharged. He was then arrested upon his discharge and subsequently convicted by a district court on 15 November 1984 on a charge under section 15(1) of the Vigilante Corps Act (Cap. 80, 1970 Ed.) for his unlawful absence from duty at Civil Defence School II with the intention of not returning to duty. The appellant did not dispute the evidence of the officer in charge of Civil Defence School II that he had briefed all newly enlisted national servicemen who were assigned to the Construction Brigade in compliance with a direction issued by the Minister for Home Affairs, Singapore, to the Commandant, Vigilante Corps. The said direction of the Minister ("the assignment") was made in pursuance of section 5(b) of the Vigilante Corps Act.

D The appellant's counsel made a submission of no case to answer on the following grounds:

(a) that the assignment was *ultra vires* the Vigilante Corps Act and therefore the appellant, as a member of the Vigilante Corps, was under no duty to undertake or perform civil defence duties;

E (b) that the imposition of construction work on the appellant was unconstitutional as a form of forced labour prohibited by article 10(2) of the Constitution of the Republic of Singapore;

F (c) that the assignment was invalid or had no effect as it had not been published in the Gazette as required by section 23(1) of the Interpretation Act;

(d) that if the assignment was valid, the appellant had no notice of it.

The learned district judge rejected all these submissions and convicted the appellant. The appellant was sentenced to four months' imprisonment with effect from 22 August 1986 which was the day the appellant had been lawfully detained in a drug rehabilitation centre. The appellant has appealed against his conviction and the public prosecutor has appealed against sentence.

H Held, allowing the appeal against conviction for desertion: (1) the Minister in making the assignment acted within the scope of his power under section 5 of the Vigilante Corps Act;

(2) the assignment was constitutional since the Minister made the assignment pursuant to a delegated power vested in him by section 5 of the Vigilante Corps Act;

I (3) the appellant's conviction was set aside on the ground that the assignment was a subsidiary legislation which required mandatory publication. As the assignment was for some reason inadvertently not published in the Gazette, it was invalid in the sense that it failed to take effect even though it was valid in the sense that the Minister had the power to make it. Consequently, the assignment could not have lawfully vested in the Vigilante Corps functions and duties relating to civil defence;

(4) in substitution, the appellant was convicted under section 24(1) of the Vigilante Corps Act of being absent from the place where he was lawfully required for the time being to be. The appellant was sentenced to two months' imprisonment with effect from 1 June 1988.

Cases referred to:

- (1) *McEldowney v. Forde* [1971] A.C. 632 (cited).
- (2) *Stag Line Ltd. v. Foscolo Mango & Co.* [1932] A.C. 328 (consd).
- (3) *The Commonwealth v. Grunseit* (1943) 67 C.L.R. 58 (folld).
- (4) *Johnson v. Sargant* [1918] 1 K.B. 101 (folld).
- (5) *R. v. Sheer Metalcraft Ltd.* [1954] 1 Q.B. 586 (distd).
- (6) *Scott v. Bank of New South Wales* [1940] N.Z.L.R. 922 (cited).
- (7) *R. v. Rose* [1945] 1 W.W.R. 590 (refd).
- (8) *Harla v. The State of Rajasthan* A.I.R. 1951 S.C. 467 (refd).
- (9) *Myer Queenstown Garden Plaza & Anor. v. City of Port Adelaide* (1975) 11 S.A.S.R. 504 (cited).
- (10) *State of U.P. v. Babu Ram* A.I.R. 1961 S.C. 751 (cited).
- (11) *Liverpool Borough Bank v. Turner* (1861) 30 L.J. Ch. 379 (cited).
- (12) *Howard v. Bodington* (1877) 2 P.D. 203 (cited).
- (13) *Montreal Street Railway Co. v. Normandin* [1917] A.C. 170 (cited).
- (14) *Blackpool Corporation v. Locker* [1948] 1 K.B. 349 (cited).
- (15) *Lim Chin Aik v. R.* [1963] M.L.J. 50 (expid).
- (16) *O'Keefe v. City of Caulfield* [1945] V.L.R. 227 (distd).
- (17) *Govindlal v. Agricultural Produce Market Committee* A.I.R. 1976 S.C. 263 (distd).
- (18) *Watson v. Lee* (1979) 26 A.L.R. 461 (cited).

MAGISTRATE'S APPEAL.

Wee Pan Lee for the appellant.

Bala Reddy for the Public Prosecutor.

Cur. Adv. Vult.

Chan Sek Keong J.C.: The appellant was convicted on the following charge by a district court on 15 November 1984:

"That you, being a full-time national serviceman in the Vigilante Corps, did unlawfully absent from duty at Civil Defence School II, Mandai Road, Singapore, from 9 July 1983 to 24 August 1983 a total of 50 days, with the intention of not returning to your duty and you are thereby deemed to have deserted national service and committed an offence punishable under section 15(1), Chapter 80 of the Vigilante Corps Act, 1970 Edition."

In sentencing the appellant to four months' imprisonment with effect from 22 August 1986, which was the day the appellant had been lawfully detained in a drug rehabilitation centre, the

A court took into account another 46 charges against the appellant for having been absent without leave.

The appellant has appealed against his conviction and the public prosecutor has appealed against the sentence.

B The facts, which were not disputed, were as follows. The appellant was on 5 May 1983 served an enlistment notice with accompanying instructions pursuant to section 10 of the Enlistment Act and was on 22 June 1983 enlisted for full-time national service in the Vigilante Corps. For his national service, he was posted to the Construction Brigade and was required to undergo a three-month residential training at the Civil Defence School II for the acquisition of skills in construction work. Initially, he was being trained as a bar bender. During his course of training, he was allowed to leave the school from 1 p.m. on Saturdays and had to report back to the school by 9 p.m. on Sunday. He was paid an allowance for each working day. He left the school one Saturday on 2 July 1983 at 1 p.m. but failed to return by 9 p.m. on Sunday. He reported that he was unfit for duty and medical certificates covering the period 4-8 July 1983 were tendered by his mother. He failed to report at 9 p.m. on 8 July 1983 and continued to absent himself from duty for 50 days from that day until 24 September 1983. He was arrested by CNB officers on 13 October 1983 and was admitted to Selarang Park Drug Rehabilitation Centre for treatment for drug addiction. On 30 May 1984, he was transferred to Jalan Awan Drug Rehabilitation Centre until 16 November 1984 when he was discharged. He was then arrested upon his discharge.

G The appellant did not dispute the evidence of the officer in charge of Civil Defence School II that he had briefed all newly enlisted national servicemen in the Vigilante Corps who were assigned to the Construction Brigade on their training and duties in compliance with a direction issued by the Minister for Home Affairs, Singapore, to the Commandant, Vigilante Corps, on 5 April 1982. The appellant and the other enlistees were told that by virtue of their enlistment they were under an obligation to undergo the training and that if they were absent without good cause from their training, they would be liable to prosecution in court.

The said direction of the Minister (which I will hereinafter refer to as "the assignment") was in the following terms:

"The Vigilante Corps Act
(Chapter 80, 1970 Ed.)

Assignment under section 5(b)

Commandant
Vigilante Corps

I, Chua Sian Chin, Minister for Home Affairs, in pursuance of the provisions of section 5(b) of the Vigilante Corps Act, hereby assign to the Vigilante Corps with effect from 5 October 1981, civil defence duties for the defence of Singapore, such duties to include the training of personnel and the acquisition of skills in construction works.

Dated this 5th day of April 1982.

Signed
Chua Sian Chin
Minister for Home Affairs
Singapore"

It was not disputed that the assignment had not been published in the Gazette.

At the end of the prosecution's case, the appellant elected to remain silent. His counsel made a submission of no case to answer on the following grounds:

- (1) that the assignment was *ultra vires* the Vigilante Corps Act and therefore the appellant as a member of the Vigilante Corps was under no duty to undertake or perform civil defence duties;
- (2) that the imposition of construction work on the appellant was unconstitutional as a form of forced labour prohibited by article 10(2) of the Constitution of the Republic of Singapore;
- (3) that the assignment was invalid or had no effect as it had not been published in the Gazette as required by section 23(1) of the Interpretation Act;
- (4) that if the assignment was valid, the appellant had no notice of it.

The learned district judge rejected all these submissions and convicted the appellant.

In this appeal, counsel for the appellant and the deputy public prosecutor relied on the same arguments made in the court below. As a starting point for the determination of issues of this nature, I adopt the approach set out by Lord Diplock in his judgment in *McEldowney v. Forde*⁽¹⁾ at p. 658, which is as follows:

"The division of functions between Parliament and the courts as respects legislation is clear. Parliament makes

- A laws and can delegate part of its power to do so to some subordinate authority. The courts construe laws whether made by Parliament directly or by a subordinate authority acting under delegated legislative powers. The view of the courts as to whether particular statutory or subordinate legislation promotes or hinders the common weal is irrelevant. The decision of the courts as to what the words used in the statutory or subordinate legislation mean is decisive. Where the validity of subordinate legislation made pursuant to powers delegated by Act of Parliament to a subordinate authority is challenged, the court has a three-fold task: first, to determine the meaning of the words used in the Act of Parliament itself to describe the subordinate legislation which that authority is authorized to make; secondly, to determine the meaning of the subordinate legislation itself and finally to decide whether the subordinate legislation complies with that description."
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Meaning of section 5(b) of the Vigilante Corps Act

- The words used by Parliament to describe the subordinate legislation which the Minister was authorized to make is enacted in section 5 of the Vigilante Corps Act. It reads:
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"5. The Corps shall –

- (a) assist the police force in the maintenance of law and order, the preservation of public peace, the prevention and detection of crime and the apprehension of offenders; and
- E
- (b) perform such other functions and duties as may be assigned to the Corps by the Minister."

- F The submission of counsel for the appellant is that section 5 does not permit the Minister to assign civil defence duties to the Vigilante Corps. It is contended that paragraphs (a) and (b) of section 5 form an integral provision and that the words "such other functions and duties" in paragraph
- G (b) should be construed *ejusdem generis* with the genus of functions and duties of the Vigilante Corps as set out in paragraph (a). It is then further contended that on such a construction the other functions and duties in paragraph (b) must be restricted to police duties since paragraph (a) is reproduced from section 8 of the Police Force Act (Cap. 235, 1985 Ed.). In other words, the genus in paragraph (a) is police duties.
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- Counsel also relies on the principle of *noscitur a sociis* in support of his construction of paragraph (b) of section 5. As the *noscitur a sociis* principle is a general principle of construction of which the *ejusdem generis* principle is a particular precept (see *Bennion on Statutory Interpretation* (1984) at p. 823), this argument is no different in substance from that founded on the application of the *ejusdem generis* principle.
- I

The learned district judge rejected this submission. He held that no limitation should be placed on the powers of the Minister under paragraph (b). His reasons are set out in the following passage in his grounds of decision:

"I held that the *ejusdem generis* rule has no application to section 5 of the Vigilante Corps Act. The general words are to be found in a separate subsection from that in which the specific words are contained. In my view, this evinces that a sense wider than the genus of the specific preceding subsection was intended. I am fortified in this by the fact that subsection (a) is by itself so comprehensive as not to admit of any expansion within its genus. Hence, Parliament's intention in enacting subsection (b) could only have been to enable the Minister to extend the functions and duties of the Vigilante Corps beyond the scope of subsection (a). To confine the functions and duties assignable by the Minister to those of like nature and quality as the kind suggested by subsection (a) would, in my judgment, be to place a limitation on the Minister's powers not called for by the enactment."

I do not find the first reason convincing. The circumstance that the functions and duties of the Vigilante Corps are contained in two separate paragraphs in section 5 of the Vigilante Corps Act cannot, by itself, be a sufficient reason for excluding the application of the *ejusdem generis* principle. The collocation of the words in section 5 under two paragraphs appears to me to reflect a drafting predilection and nothing more. This can be tested simply by removing the numbering of the paragraphs. Read in this way, no change in the meaning or scope of section 5, whatever it is, is discernible.

The second reason is somewhat obscure since the district judge has not identified the genus in paragraph (a) that was so comprehensive that it could not admit of any expansion to accommodate other functions and duties that were assignable to the Vigilante Corps. He could not have meant that paragraph (a) contained no genus since he expressly stated that the genus was too comprehensive. He could have meant that as the words in paragraph (a) are wider than the words in paragraph (b), the *ejusdem generis* principle is not applicable because the principle applies only to general words following words which are less general (see Bennion (*ibid*) para 383). On the other hand, he might not have meant that either, because in the later part of his grounds of decision he rejected the application of the *noscitur a sociis* principle on the ground that "the words of subsection (b) are so general that the application of this principle would not be appropriate".

For these reasons, I do not find the reasoning of the district judge satisfactory in rejecting the

A application of the *ejusdem generis* principle in construing the scope of paragraph (b) of section 5.

The *ejusdem generis* principle is a general principle of construction applied by the courts in construing documents, whether they be contracts, wills, statutes or subsidiary legislation.

With reference to statutes, the principle is described in 44 *Halsbury's Laws of England* 4th Ed. para 877 as follows:

C "As a rule, where in a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution, and subject to the primary rule that statutes are to be construed in accordance with the intention of Parliament. For the *ejusdem generis* rule to apply, the specific words must constitute a category, class or genus and the general words must not by their nature exclude themselves from the category, class or genus, so that, for example, a superior thing will not be held to be within a class of inferior things. If the particular words exhaust a whole genus, the general words must be construed as referring to some larger genus."

E In respect of section 5 of the Vigilante Corps Act, there is no doubt whatever that the words "other functions and duties" in paragraph (b) are general words following the specific words describing the specific functions and duties in paragraph (a). Was the district judge correct in concluding that paragraph (a) has exhausted the genus of functions and duties described therein?

G In my view, the apprehension of offenders and the prevention and detection of crime are concepts or functions of an inferior order to the preservation of the public peace and the maintenance of law and order, as the attainment of the former is necessary to the attainment of the latter. Similarly, the concept or function of maintaining law and order and preserving the public peace is related to the larger concept or function of providing for the security and safety of the public as regards their persons, property and rights. The general words in paragraph (b) should therefore be construed to limit the powers of the Minister to assigning functions and duties which are connected with the preservation and maintenance of the security and safety of the public. Although section 5 of the Vigilante Corps Act makes a distinction between the character of the functions in paragraph (a) and those in paragraph (b) in that the former are to be carried out by way of assisting the police force whereas the second may be carried out independently by the Vigilante Corps, I do not think that this distinction is sufficient to show an

intention to exclude the application of the *ejusdem generis* rule.

In any case, whether or not the *ejusdem generis* principle were applicable to the interpretation of paragraph (b), I am of the view that some limitation has to be placed on the general words in paragraph (b) as otherwise the Minister would be entitled to assign whatever duties and functions he thought fit to the Vigilante Corps. If Parliament had intended to give him an unlimited power, Parliament would not have found it necessary to specify the purposes in paragraph (a).

A case in point, although it concerned the construction of a contractual provision, is *Stag Line Ltd. v. Foscolo Mango & Co.*⁽²⁾ In that case, a cargo of coal was loaded on the appellants' steamship IXIA at Swansea for carriage to Constantinople under bills of lading which gave the shipowners "liberty ... to call at any ports in any order, for bunkering or other purposes ... all as part of the contract voyage." The IXIA was fitted in the interest of the shipowners with a superheater, and when she started from Swansea she had on board two engineers for the purpose of observing whether the superheater was working efficiently. It was intended to land these two engineers with the pilot at Lundy, but when the vessel reached that island, no satisfactory trial of the superheater having been obtained, the two engineers remained on board and were later landed in St. Ives Bay. In proceeding there and for some time after leaving there the IXIA was off the usual route. Shortly after resuming her voyage from St. Ives Bay, and before she had returned to the usual route, the IXIA stranded on the Cornish coast, and both ship and cargo were lost.

The House of Lords held that the departure of the IXIA from the contract route did not come within the liberty given by the bills of lading, as the words "other purposes" in the context must be construed as meaning the calling at a port for some purpose having relation to the contract voyage.

On this point, Lord Russell said (at p. 345):

"While I appreciate the difficulty of applying what is called the *ejusdem generis* rule where only one species is available out of which to construct the genus, nevertheless it seems clear that some limitation must be placed upon the words 'other purposes'. If they are to be read as free from any limitation, then it was unnecessary to specify the bunkering purpose. Some restriction must, therefore, exist; and for myself I am in agreement with the view that the IXIA's call at St. Ives, not being a call for the purposes of the contract venture, was not a call for 'other purposes' within the meaning of the liberty."

A Lord Macmillan said (at pp. 348-349):

"As to the second contention, the liberty to call at any ports 'for bunkering or other purposes' cannot be read as meaning that the ship was to be at liberty to call at any ports for bunkering purposes other than bunkering, for that would be tantamount to saying that she might call at any port for any purpose. I read the words as meaning 'for the purpose of bunkering or for any similar purpose'. What purposes are similar to the purpose of bunkering I shall not attempt to define. It suffices to say that in my opinion the purpose for which the IXIA called at St. Ives was not a purpose in any way resembling so ordinary a maritime incident as bunkering."

C

Nature of civil defence duties

The next question I have to consider is whether civil defence duties are connected with the maintenance and preservation of the security and safety of the people of Singapore. The ordinary or dictionary meaning of "civil defence" as provided in the *Longman Dictionary of the English Language*, 1984 is as follows:

E "the complex of protective measures and emergency relief activities conducted by and for civilians in case of hostile attack, especially by air, or natural disaster."

In 1985, the Civil Defence Act (Cap. 42, 1985 Ed.) was passed by Parliament. In that Act, the expression "civil defence" is defined as follows:

F "the planning, organization, co-ordination and implementation of measures, other than measures amounting to an actual combat, that are necessary or desirable for the safety of the public and are designed to guard against, prevent, reduce, or overcome the effects or possible effects of a national emergency or a civil defence emergency and includes the conducting of, and participation in, drills, exercises and training for such purposes."

The expression "civil defence emergency" is defined as:

H "any fire, explosion, earthquake, oil spill, eruption, flood, storm or other happening (whether or not attributable to an attack by an enemy or to any warlike act) that causes or may cause destruction of or damage to property or loss of life or injury or distress to persons or that in any way endangers the safety of the public in Singapore or in any part thereof."

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It can be seen that the statutory definition contains a similar concept of civil defence in that it includes disasters occurring in peace time. Civil defence is a function of preventing or reducing further damage or loss to property and life and thereby indirectly promoting the maintenance and preser-

vation of the peace, security and safety of the people of Singapore. Training in and acquisition of knowledge of construction work will equip the Vigilante Corps in the better discharge of their civil defence duties.

For these reasons, I am of the view that the Minister in making the assignment acted within the scope of his power under section 5 of the Vigilante Corps Act.

Constitutionality of assignment

Article 10(2) of the Constitution of the Republic of Singapore provides:

"All forms of forced labour are prohibited, but Parliament may by law provide for compulsory service for national purposes."

Counsel for the appellant submits that the form of national service which the appellant was required to undergo (*i.e.* civil defence) was a form of forced labour prohibited by article 10(2) of the Constitution and that under that article only Parliament may enact a law providing for such service for national purposes. The basis of this submission is that the Constitution, being the supreme law, ought to be interpreted literally, so that when article 10(2) specifically empowers Parliament to make any law, only Parliament may do so and not any Minister.

This submission contains an unstated assumption, which is that national service *per se* is a form of forced labour. However, the point does not arise for decision in this appeal as counsel conceded that service in the Vigilante Corps as a form of national service was within the terms of a law passed by Parliament for national purposes, *i.e.* the Enlistment Act.

The issue is whether the Minister has the power to make the assignment. Since the Minister made the assignment pursuant to a delegated power vested in him by section 5 of the Vigilante Corps Act, counsel's submission amounts to saying that article 10(2) prohibits Parliament from delegating any power for any purpose in any law providing for compulsory service for national purposes. I am unable to accept this argument. There is neither principle nor authority to support such a proposition. Delegated legislation has been a necessary feature of government in Singapore long before the Constitution was enacted. In the absence of express words in article 10(2) showing a contrary intention, I am not prepared to strain the language

A of article 10(2) to require Parliament to legislate for every aspect and detail of national service.

Publication of subsidiary legislation

Section 23 of the Interpretation Act provides as follows:

B "“(1) Subsidiary legislation made under any Act or other lawful authority shall, unless it be otherwise expressly provided in any Act, be published in the Gazette and, unless it be otherwise provided in the subsidiary legislation, shall take effect and come into operation on the date of its publication.

C (2) Any such subsidiary legislation may be made to operate retrospectively to any date not being a date earlier than the commencement of the Act or the establishment of the authority by or under which the subsidiary legislation is made.”

D The expressions “subsidiary legislation” and “written law” are defined in section 2 as follows:

“‘subsidiary legislation’ means any order in council, proclamation, rule, regulation, order, notification, by-law or other instrument made under any Act, Ordinance or other lawful authority and having legislative effect.

E “‘written law’ means the Constitution and all previous Constitutions having application to Singapore and all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore.”

F The submission of counsel for the appellant on section 23(1) is as follows: (a) the assignment had legislative effect and was therefore subsidiary legislation; (b) it was not published in the Gazette as required by section 23(1) of the Interpretation Act (Cap. 1, 1985 Ed.) and was therefore invalid or ineffective; (c) therefore, the Vigilante Corps was not lawfully vested with civil defence duties with the consequence that the appellant could not be guilty of desertion from any lawful duty.

H I The submission of the deputy public prosecutor is as follows: (a) the assignment was an administrative act and publication in the Gazette was not required; (b) even if the assignment were subsidiary legislation, non-publication in the Gazette did not invalidate it or render it ineffective, as section 23(1) is procedural or directory; and (c) the appellant had actual knowledge of the assignment.

Whether the assignment is subsidiary legislation

The district judge decided that the assignment had legislative effect on the ground that it brought into effect what would otherwise have been requir-

ed to be passed by an Act of Parliament. It was therefore subsidiary legislation. The deputy public prosecutor in contending otherwise referred to the decision of the High Court of Australia in *The Commonwealth v. Grunseit*⁽³⁾ in support of his contention.

In that case, one of the issues before the court was whether a direction given by the Minister for the Army pursuant to a certain regulation made under the National Security Act 1939-40 was an order, rule or by-law "of a legislative and not of an executive character". If the direction were of a legislative character, it had to be laid before each House of Parliament within a specified time and if it were not so laid would become void and of no effect by virtue of section 48 of the Acts Interpretation Act 1901-1937. The direction in question was not so laid. The direction was to the effect that every male refugee alien of certain descriptions would perform such service as was directed by the Minister of State for the Interior, not being service in the armed forces, but being service which the alien was, in the opinion of the Minister of State for the Interior, capable of performing.

In discussing the difference between a legislative act and an executive act, Latham C.J. said (at pp. 82-83):

"The provisions of section 5(4) of the National Security Act are based upon the proposition that it is possible to distinguish between orders, rules and by-laws which are of a legislative character and orders, rules and by-laws which are of an executive character. It is not always easy to draw this distinction. Rules and by-laws by their very nature appear to partake of a legislative character, but it is plain that section 5(4) contemplates that they may be executive rather than legislative in character. In the case of orders, some orders would plainly be executive, as, for example, where in pursuance of a power created by legislation a particular person was ordered by another person to do a particular thing. *The general distinction between legislation and the execution of legislation is that legislation determines the content of a law as a rule of conduct or a declaration as to power, right or duty, whereas executive authority applies the law in particular cases* [my emphasis]. Attention has been given in the United States of America to this distinction for the purpose of applying the doctrine which is there accepted of the separation of legislative, executive and judicial power. My brother Williams referred to the case of *J.W. Hampton Jr. & Co. v. United States* (1928) 276 U.S., at p. 407, where it was said: 'The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law.' See also *Panama Refining Co. v. Ryan* (1935) 293 U.S. 388, at pp. 426, 429, 430 and *Opp Cotton Mills Inc. v. Administrator of Wage and Hour Division of Department of Labour* (1941) 312 U.S. 126, at p. 145.

- A In the present case, in my opinion, the direction of the Minister for the Army applies the general rule which is laid down by regulation 8 to particular cases which are described by reference to common characteristics. The law is not altered by the direction of the Minister; it is neither extended nor limited. The direction makes the law applicable in certain cases, the content of the law not being changed. The case might be more open to argument if the order of the Minister created a new rule of conduct depending upon circumstances or considerations which were not stated or indicated in the regulation. I agree with the decision of Williams J. that the order of the Minister for the Army in this case was of an executive, not of a legislative character, and that it was therefore not necessary to lay it before Parliament."
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The test applied by Williams J., in the court below, is found in the following passage (at p. 66):

- "The direction of 17 August was made pursuant to the provisions of regulation 8 of the Aliens Service Regulations. That regulation defines the classes of aliens who are subject to any direction which the Minister of State for the Army may give, and the work which they can be required to do. It prescribes both the legal obligation and the class of persons who are subjected to it. The Minister has a mere discretion to direct the time and the manner in which these aliens shall be compelled to perform the obligation. He can only administer an existing law by directing persons who are subject to that law to do acts which they are liable to perform under that law. In giving a direction he is merely carrying an existing law into execution. Such a direction is, in my opinion, of an executive character, and need not be laid before the Houses of Parliament."
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- As the Constitution of the Republic of Singapore is also based on the doctrine of separation of powers (as modified to accommodate the Westminster model of parliamentary government), I am of the view that the test propounded by the High Court of Australia to differentiate between a legislative and an executive or administrative act is applicable to Singapore. On this test, the assignment was an order or other instrument having legislative effect as it was intended to charge the Vigilante Corps with additional functions and duties which, but for the assignment, it would not have had. In making the assignment under paragraph (b) of section 5, the Minister was determining, for the time being, the content of the Vigilante Corps Act as a rule of conduct or a declaration of the duties of the Vigilante Corps.
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- Accordingly, I agree with the district judge that the assignment was subsidiary legislation.
- I

Whether section 23(1) is mandatory or directory

The district judge accepted the submission of the deputy public prosecutor and held that section 23(1) was procedural in nature and that the failure to publish the assignment in the Gazette did not

affect its validity. He was of the view that the consequence of such breach was that the prosecution had the additional burden of proving that the appellant had knowledge of the assignment. In other words, the common law principle in *Johnson v. Sargant*⁽⁴⁾ is still applicable in Singapore. The district judge supported his conclusion on two grounds: first, the decision of *R. v. Sheer Metalcraft Ltd.*⁽⁵⁾ which, in his view, was "based on a statute containing provisions which appear to be a codification with the necessary modifications of what I hold to be the proper interpretation of section 23(1)". Secondly, he was of the view that if the assignment was then published in the Gazette to commence retrospectively, the appellant would have had no defence as he had knowledge of the terms of the assignment. In my view, neither of these grounds supports the decision of the district judge. I shall consider the second ground later. As for the first ground, in *R. v. Sheer Metalcraft Ltd.*,⁽⁵⁾ Streatfield J. held that a statutory instrument made by a Minister was valid and effective as soon as it was made, or where it was required to be laid before Parliament, when it was so laid, notwithstanding that the provisions of the Statutory Instruments Act 1946 and the regulations made thereunder relating to the printing and issuing of statutory instruments had not been complied with. The learned judge held that the provisions of the said Act were matters of procedure as section 3(2) thereof provided a defence to anyone affected where reasonable steps had not been taken for bringing the statutory instrument to his notice. In my view, the language of the rules and provisions of the said Act are so different from section 23(1) of the Interpretation Act that neither the decision itself nor the said Act can properly be used to construe the meaning of the Singapore provision.

The true issue concerning section 23(1) is not whether the section is procedural or substantive as a procedural defect may also lead to invalidity. The true issue is whether section 23(1) is mandatory or directory. It is a question of legislative intent. To determine what that is, it may be useful to bear in mind what the common law position is and what the law was in Singapore immediately prior to the commencement of the Interpretation Act.

When delegated or subsidiary legislation takes effect at common law cannot be said to be settled. There are few authorities. In *Johnson v. Sargant*⁽⁴⁾ Bailhache J. held that an Order, made by the Food Controller under the Defence of the Realm Regula-

tions on 16 May 1917 did not take effect until it became known to the parties or to the public generally on the following day. Many writers on English constitutional and administrative law do not accept this decision as correctly representing the law. They assert that delegated legislation comes into operation on the date that it is made, and if laying before Parliament is required, then upon such laying: see *R. v. Sheer Metalcraft*⁽⁵⁾, whilst at the same time recognizing that the rule is modified in criminal cases by the defence provided by section 3(2) of the Statutory Instruments Act 1946 (see D.J. Lanham, "Delegated Legislation and Publication" (1974) 37 Mod. L.R. 510). In New Zealand, the High Court has held in *Scott v. Bank of New South Wales*⁽⁶⁾ that delegated legislation came into force on the day it was made, whether gazetted on that day or not. However, *Johnson v. Sargant*⁽⁴⁾ has been expressly followed by the British Columbia court in *R. v. Rose*⁽⁷⁾ and by the Supreme Court of India in *Harla v. The State of Rajasthan*.⁽⁸⁾ The Supreme Court of South Australia appears to have accepted the rationale of *Johnson v. Sargant*⁽⁴⁾ (see Wells J. in *Myer Queenstown Garden Plaza & Anor. v. City of Port Adelaide*⁽⁹⁾ at p. 537). If it were necessary for me to decide what the common law rule is in Singapore, I would follow *Johnson v. Sargant*⁽⁴⁾ for reasons which I shall give later.

The relevant statute in force in Singapore prior to the coming into force of the Interpretation Act was the Interpretation Ordinance (Cap. 2, 1936 Ed., being Ordinance No. 6 of 1912). Section 7(i) provided as follows:

"Proclamations orders and notifications of the Government or the Government-in-Council shall come into operation on the date of their publication in the Gazette unless some other date is therein appointed."

Two observations are apposite. First, this section made no distinction between proclamations *etc* of a legislative and of an executive character. Secondly, the common law rule relating to the commencement of subsidiary legislation was abrogated by this section.

Section 23 of the Interpretation Act was first enacted as section 22 of Ordinance No. 4 of 1951. The said Ordinance followed closely the 1948 Interpretation and General Clauses Ordinances of the then Federation of Malaya and the then Colony of Kenya. Section 23(1) was a reproduction of section 22 of the 1948 Malayan Ordinance. The 1948 Malayan Ordinance was repealed by the Malaysian Parliament by the Interpretation

Act 1973 but section 22 thereof was re-enacted as section 18 in a slightly different form though still in mandatory terms. Section 18 was subsequently repealed by Act 40 of 1968 which replaced it with a provision that publication in the Gazette "shall constitute sufficient notice of any matter required to be published in the Gazette ..." The current position in Malaysia is that there is no general statutory provision requiring Acts or subsidiary legislation to be published in the Gazette.

I now turn to the wording of section 23(1) of the Interpretation Act. Structurally, it is in two parts. The first part provides that "subsidiary legislation ... shall, unless it be otherwise provided ... be published in the Gazette". Ignoring for the time being the effect of the qualifying clause, the effect of which I shall discuss later, the use of the word "shall" in a statute to qualify a thing to be done indicates the *prima facie* intention of the legislature that it must be done, *i.e.* it is mandatory. However, it is not conclusive in every case. In the appropriate context, it may be directory. Whether or not it is mandatory or directory depends on the legislative intent. How does a court ascertain the legislative intent in such a case? The relevant rules of interpretation applicable to an enactment which is mandatory in form have been summarized succinctly by Subba Rao J. in *State of U.P. v. Babu Ram*⁽¹⁰⁾ at p. 765 as follows:

"(29) The relevant rules of interpretation may be briefly stated thus: when a statute uses the word 'shall', *prima facie* it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the court may consider, *inter alia*, the nature and the design of the statute, and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

In *Liverpool Borough Bank v. Turner*,⁽¹¹⁾ Lord Campbell C.J. said (at p. 380):

"No universal rule can be laid down ... It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed."

In *Howard v. Bodington*,⁽¹²⁾ Lord Penzance supported this view and said:

A "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory ...

B I have been very carefully through all the principal cases, but upon reading them all, the conclusion at which I am constrained to arrive is this, that you cannot glean a great deal that is very decisive from a perusal of these cases. They are on all sorts of subjects. It is very difficult to group them together, and the tendency of my mind, after reading them, is to come to the conclusion which was expressed by Lord Campbell in the case of *Liverpool Borough Bank Turner* (1861) 30 L.J. Ch. 379."

In *Montreal Street Railway Co. v. Normandin*,⁽¹³⁾ Sir Arthur Channell, in delivering the judgment of the Privy Council, said (at p. 174):

D "The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on *Statutes*, 5th Ed., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in the neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

I will now discuss these considerations in relation to section 23(1) of the Interpretation Act.

(a) Subject matter

The subject matter is the requirement of publication of subsidiary legislation in the Gazette. The importance of section 23(1) cannot be over-emphasized. It is a manifestation of the legislature's recognition and acceptance of the need to inform or to enable the public to be informed of the law. The public has a right to know or be informed of subsidiary legislation affecting them and this right may be said to be inherent in the legal system to which they are subject for two reasons. First, the common law is the basic law of Singapore and is the foundation of its legal system. The common law applies the precept that ignorance of the law is not an excuse for non-compliance with the law. There are no exceptions to this principle: see 44 *Halsbury's Laws of England*, 4th Ed., para 991. The precept may be justified on the ground of necessity (as otherwise the enforcement of the law will become impossible) but it has also been justified on the ground

that it is predicated upon the condition that the law is accessible to the public. In *Blackpool Corporation v. Locker*,⁽¹⁴⁾ Scott L.J. provided this justification in these words, at p. 362:

"There is one quite general question affecting all such sub-delegated legislation, and of supreme importance to the continuance of the rule of law under the British constitution, namely, the right of the public affected to know what that law is. That right was denied to the defendant in the present case. *The maxim that ignorance of the law does not excuse any subject represents the working hypothesis on which the rule of law rests in British democracy* [my emphasis]. That maxim applies in legal theory just as much to written as to unwritten law, i.e. to statute law as much as to common law or equity. *But the very justification for that basic maxim is that the whole of our law, written or unwritten, is accessible to the public – in the sense, of course, that, at any rate, its legal advisers have access to it, at any moment, as of right* [my emphasis] ... in both types of legislation, parliamentary and delegated, the aggrieved citizen at least knows, or his lawyers can tell him, just what his rights and duties and restrictions are under the new law: because each kind of statutory law is at once published by the King's Printer – whether as Acts of Parliament or as statutory instruments. On the other hand, if the power delegated to the minister is to make sub-delegated legislation and he exercises it, there is no duty on him, either by statute or at common law, to publish his sub-delegated legislation: and John Citizen may remain in complete ignorance of what rights over him and his property have been secretly conferred by the minister on some authority or other, and what residual rights have been left to himself. *For practical purposes, the rule of law, of which the nation is so justly proud, breaks down because the aggrieved subject's legal remedy is gravely impaired* [my emphasis]. When executive or administrative directions falling short of legislation accompany the sub-delegated legislation, as they may often do, the omission to publish such directions raises no legal issue, or at any rate none relevant to the present appeal; but such cases as the present do appear to me *ex debito justitiae* to demonstrate the crying need for immediate publication of all matter that is truly legislative. That might mean, I think, an amendment of the Statutory Instruments Act 1946."

It should be noted that the law in England was subsequently amended to provide for publication of sub-delegated legislation: see 44 *Halsbury's Laws of England*, para 985 n. 5.

The second reason is that under our legal system, a person is at liberty to do as he wishes except that which is prohibited by law or which encroaches upon the rights of others. It is therefore only reasonable that this liberty should not be indirectly curtailed by laws and regulations unknown or inaccessible to him. The rationale for the precept as expounded by Scott L.J. in *Blackpool Corporation v. Locker*⁽¹⁴⁾ was accepted by the Privy Council in *Lim Chin Aik v. R.*⁽¹⁵⁾ where the appellant had been convicted of contravening an order made under the Immigration Or-

A dinance prohibiting him from entering Singapore. The said order had not been published in the Gazette nor was it brought to the knowledge of the appellant until he was arrested whilst in Singapore. The prosecution contended that the said order was part of the law of Singapore of which ignorance provided no excuse upon a charge of contravention thereof. The Privy Council rejected this contention in these words:

"In their Lordships' opinion, even if the making of the order by the Minister be regarded as an exercise of the legislative as distinct from the executive or administrative function (as they do not concede), the maxim cannot apply to such a case as the present where it appears that there is in the State of Singapore no provision corresponding, for example, to that contained in section 3(2) of the English Statutory Instruments Act of 1946, for the publication in any form of an order of the kind made in the present case, or any other provision designed to enable a man by appropriate enquiry to find out what 'the law' is."

Nothing in their Lordships' judgment indicated their awareness of section 23(1) of the Interpretation Act. The Privy Council, however, went on to decide that the offence required *mens rea* and since, on the facts of that case, *mens rea* had not been proved, the appeal was allowed.

In Singapore, the framers of our Constitution have gone one step further in providing for the publication of Acts of Parliament. They have, in article 58 of the Constitution of the Republic of Singapore, elevated the publication of legislation as a constitutional obligation. That article provides:

"(1) Subject to the provisions of Part VII, the power of the legislature to make laws shall be exercised by bills passed by Parliament and assented to by the President.

(2) A bill shall become law on being assented to by the President and such law shall come into operation on the date of its publication in the Gazette or, if it is enacted either in such law or in any other law for the time being in force in Singapore that it shall come into operation on some other date, on that date."

The framers of the Constitution could have left it to the common law to regulate the commencement of Acts of Parliament but instead, they elected to make publication of Acts of Parliament in the Gazette as a condition precedent to their commencement, whether before, at or after the date of publication, as Acts of Parliament.

(b) Design of section 23(1)

Section 23(1) provides for publication of subsidiary legislation in the Gazette as a means of

bringing it to the knowledge of the public. Publication in the Gazette is also a means of providing judicial proof of the public having knowledge of such subsidiary legislation. The legislature could have provided for a different means, *e.g.* by publication in a daily newspaper or radio. Thus, by requiring publication in the Gazette in terms of section 23(1), the legislature intended not only to abrogate the common law rule as to when subsidiary legislation takes effect, but also to avoid the inconvenience of having to prove in each case when subsidiary legislation has come to the knowledge of the persons affected by it. Conclusive proof may be given by the production of the Gazette.

(c) *Impact of other provisions*

In my view, there is no other provision in the Interpretation Act which mitigates the *prima facie* meaning of "shall". However, there are three provisions therein which require comment. The first is section 24 which provides that judicial notice shall be taken of all subsidiary legislation made or purporting to be made in pursuance of any Act or other lawful authority. This provision does not affect the meaning of section 23(1). Judicial notice of subsidiary legislation refers to its existence and not its validity.

The second provision is section 23(2) which enables subsidiary legislation to be made with retrospective effect. The district judge was influenced by his interpretation of the effect of this section in deciding that section 23(1) was procedural (*i.e.* directory). He reasoned that if the assignment had been published with retrospective effect, the appellant would have had no defence as he had knowledge of the assignment. Leaving aside the question whether as a matter of fact the appellant had knowledge of the assignment or merely had knowledge of the duties as communicated to him by his superior officer (and on the evidence, it seems to me to be the latter rather than the former), I do not agree with this reasoning. The publication of the assignment with retrospective effect would not have affected the appellant because of the constitutional protection of article 11(1) against punishment under retrospective legislation.

The third provision is section 10 which provides that any written law (which expression is defined to include subsidiary legislation) which is expressed to come into operation on a particular date shall come into operation on the expiration of the previous day. This provision is a restatement of

A the common law position on the commencement of statutes: 44 *Halsbury's Laws of England*, 4th Ed. at para 917. In my view, section 10 is also not relevant to the interpretation of section 23(1) as it presumes that subsidiary legislation has taken effect. The issue here is whether subsidiary legislation is valid if it is not published in the Gazette.

(d) *Inconvenience*

I cannot see that any serious general inconvenience that would be caused by holding that non-compliance with section 23(1) would render subsidiary legislation invalid or ineffective. Publication in the Gazette is a simple matter. A cursory glance at any issue of the Gazette will reveal that many orders, regulations, directives and notices having no legislative effect have been and continue to be published in the Gazette. There was no reason for the assignment not to have been published. It can still be published with the same retrospective effect if it is necessary to do so in order to validate all prior acts done thereunder.

(e) *Relevant decisions*

The four considerations I have discussed above reinforce rather than mitigate the *prima facie* effect of "shall" in section 23(1). This conclusion also receives support from decisions of some Commonwealth courts in construing legislation of a similar character. In *O'Keefe v. City of Caulfield*,⁽¹⁶⁾ the Supreme Court of the State of Victoria held that a regulation made under the provisions of the Local Government Act 1890 was invalid because its full text was not published at length in the Government Gazette. The relevant provision, *i.e.* section 204 of that Act provided that:

"Every by-law shall be published at length in the Government Gazette."

In *Govindlal v. Agricultural Produce Market Committee*,⁽¹⁷⁾ the Supreme Court of India held that section 6(1) of the Gujarat Agricultural Produce Markets Act which provided that "A notification under this section shall also be published in Gujarat in a newspaper having circulation in the said area ..." was mandatory. The court was of the view that the word "also" provided an important clue to the intention of the legislature because the Act had already provided for publication in the Official Gazette.

These two decisions concerned provisions in specific statutes for publication of regulations

made thereunder and not in a general statute providing for publication in the Gazette of all subsidiary legislation.

However, in *Watson v. Lee*,⁽¹⁸⁾ the High Court of Australia decided to the same effect in respect of a general provision requiring publication of regulations. Section 48(1) of the Acts Interpretation Act (Australia) provided that:

“(1) Where an Act confers power to make regulations, then, unless the contrary intention appears, all regulations made accordingly –

(a) shall be notified in the Gazette;

(b) shall, subject to this section, take effect from the date of notification, or, where another date is specified in the regulations, from the date specified; and

(c) shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations.”

The High Court (by a majority) was of the view that the requirement of notification was mandatory. His Honour Stephen J. (as he then was) said (at p. 477):

“The consequence of a failure to comply with this requirement of section 48(1)(a), that regulations, once made, should be notified in the Gazette, is, in my view, that those regulations do not take effect. The failure will not affect the making of the regulations, their making precedes and is quite distinct from notification, as the terms of section 48(1) demonstrate. But notification is a critical step in the statutory process of delegated law-making and without it that process is incomplete.”

To complete my examination of all relevant factors, I should observe that Parliament itself (or rather, the draftsmen of the relevant Acts) has (or have) not been consistent in the treatment of section 23(1). Parliament has passed laws some of which specifically provide for and some of which do not provide for the publication of subsidiary legislation. It is not possible to ascertain the intention of the legislature in section 23(1) by a detailed examination of the statutes of Singapore, whether passed before or after the commencement of the Interpretation Act.

(f) *Impact of qualifying clause in section 23(1)*

In my view, any doubt as to the mandatory effect of section 23(1) has been removed by the very language of section 23(1). It says that subsidiary legislation shall be published in the Gazette, “unless it be otherwise expressly provided in any Act”. These qualifying words make it clear beyond doubt that Parliament intended publication of

A subsidiary legislation in the Gazette to be mandatory and not directory and that the obligation to do so can only be overridden by the relevant Act (under which subsidiary legislation is empowered to be made) expressly providing to the contrary. If publication were intended to be directory, the qualifying words would have been wholly unnecessary.

The same construction is applicable to the second part of section 23(1) in relation to the commencement date. By virtue of that provision, where subsidiary legislation does not provide a date for commencement, it shall take effect and come into operation on the date of its publication. Therefore, in respect of subsidiary legislation which does not specify a date of commencement, publication in the Gazette is perforce mandatory. No publication means no commencement. Where subsidiary legislation is expressed to commence retrospectively or prospectively, section 23(1) provides that it shall commence on such date. In my view, this does not and should not be construed to mean that such subsidiary legislation will take effect on such date in the absence of publication in the Gazette. If subsidiary legislation which is intended to take effect immediately only takes effect upon its publication, there is no logical reason why retrospective or prospective subsidiary legislation should take effect without publication or that it cannot be given such effect on its publication. Read as a whole, and reading the first part in harmony with the second part, section 23(1) means that publication in the Gazette is a condition precedent to the commencement of subsidiary legislation, whether retrospectively, immediately or prospectively. This construction is also consistent with the structure of article 58 of the Constitution of Singapore.

What then is the consequence of non-compliance with section 23(1)? The basic distinction between a mandatory and a directory provision is that non-compliance with the former renders the act invalid whereas non-compliance with the latter does not render such act invalid, although a penalty may be imposed on the person who has acted in breach. The meaning of valid or invalid in this context is not precise. The assignment, even in the absence of publication in the Gazette, was valid in the sense that the Minister had the power to make it. It was invalid in the sense that it failed to take effect for want of publication in the Gazette. I would prefer to say that the assignment was invalid in the latter sense. The consequence was that the assignment could not have

lawfully vested in the Vigilante Corps functions and duties relating to civil defence. A

Does it also follow from this conclusion that the appellant was entitled to an acquittal on the charge? He was convicted of desertion, *i.e.* being unlawfully absent from duty at Civil Defence School II, Mandai Road, for a period of 50 days under section 15(1) (now section 14(1)) of the Vigilante Corps Act. On the evidence, it would appear that the appellant's duty at Civil Defence School II was to be trained in construction work for the purpose of civil defence duties. To the extent that the Vigilante Corps were not, as I have held, vested with duties relating to civil defence, at that time, he could not have been compelled to submit himself to such training for such purpose.

To this extent, I think the defence succeeds. However, on the evidence, it is abundantly clear that he was absent without leave from his place of duty. He was under a lawful duty to report to and remain at Civil Defence School II even though he was not under a lawful duty to undergo civil defence training. It is, therefore, clear that the appellant had committed an offence under paragraph 10 of the Schedule to section 24 of the Vigilante Corps Act which provides for the offence of absence without leave in the following terms:

"10. Absents without leave or good cause from service or from the place where he is lawfully required for the time being to be."

In the circumstances, I substitute for the conviction under appeal a conviction under section 24(1) of the Vigilante Corps Act of being absent from the place where he was lawfully required for the time being to be.

As for the sentence, I agree with the submission of the deputy public prosecutor that the district judge erred in law in treating detention in a drug rehabilitation centre as being equivalent to imprisonment for the purpose of serving out a sentence of imprisonment under section 223 of the Criminal Procedure Code. Unless such a centre is gazetted as a prison under the Prisons Act, it is not a prison for the purpose of serving a term of imprisonment therein. Any sentence of imprisonment must commence from the date it was passed without any allowance whatever being allowed for the period of detention served by the appellant in a drug rehabilitation centre.

I will now hear submissions on the sentence.

Appeal against conviction allowed.

Note: After hearing the submission on sentence, the court sentenced the appellant to two months' imprisonment with effect from 1 June 1988 in view of the appellant's failure to serve national service which the court considered was a serious offence.

Solicitors: *Wee Tay & Lim.*

**KEVIN DESMOND DE SOUZA & ORS. v.
THE MINISTER OF HOME AFFAIRS & ORS.**

[O.Cr.J. (Lai Kew Chai J.) 27 May 1988]

[Singapore — Originating Motions Nos. 54, 55 & 56 of 1988]

Administrative Law — Detention without warrants — Suspension orders — Re-arrests upon issue of joint statement denying offence — Writ of habeas corpus ad subjiciendum — Whether detentions and re-arrests illegal or improper — Judicial review — Internal Security Act (Cap. 143, 1985 Ed.), ss. 8(1), 10 & 11 — Interpretation Act (Cap. 1, 1985 Ed.), s. 45.

Preventive Detention — Detention without warrants — Suspension orders — Re-arrests upon issue of joint statement denying offence — Writ of habeas corpus ad subjiciendum — Whether detentions and re-arrests illegal or improper — Internal Security Act (Cap. 143, 1985 Ed.), ss. 8(1), 10 & 11.

By these three originating motions, the applicants applied for writs of *habeas corpus ad subjiciendum*. The first and second applicants were arrested without warrants on 21 May 1987. The third applicant was arrested, also without warrant, a month later on 20 June 1987. They were all arrested under the Internal Security Act (Cap. 143, 1985 Ed.) ("the Act") and remained in police custody during which time they were interrogated and statements were taken from them. The first and second applicants remained in police custody until 19 June 1987 when on that day the Minister for Home Affairs made two orders under section 8(1) of the Act that they be forthwith detained for a period of one year from 20 June 1987. The third applicant was also detained forthwith for a period of one year with effect from 19 July 1987 under a ministerial detention order made on 18 July 1987. Copies of the orders of detention were duly served on each of the three applicants together with a statement pursuant to section 11 of the Act setting out the respective grounds and alleged facts on which the detention orders were made. On 26 September 1987, the Minister, in exercise of the powers conferred on him by section 10 of the Act, directed that the operation of the said orders be suspended subject to the execution of a bond and compliance with certain conditions. On 18 April 1988, the three applicants and five other ex-detainees signed and issued a joint statement to the media and others. In that statement they, *inter alia*, denied that they were Marxist conspirators involved in the Marxist plot. On 19 April 1988, the Minister in exercise of the powers conferred by section 10 of the Act revoked all three directions dated 26 September 1987 as he was "satisfied that it was necessary to do so in the public interest in view of a joint statement issued by the three applicants". In consequence, the applicants were re-arrested and remained in detention at the Whitley Road Centre as directed by the Minister.